IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 415 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT BANK WORKER'S UNION

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 415 of 1994

MR HJ NANAVATI for Petitioner No. 1

MS PARUL P VASAVADA for Petitioner No. 1

MR JD AJMERA for Respondent No. 1

MR KM PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr.H.J.Nanavati on behalf

of the petitioner and learned advocate Mr.K.M.Patel for respondent No.2, so also, learned advocate Mr.Anjaria for respondent No.1.

In the present petition, the petitioner has challenged the impugned order which is at page.78 of the petition passed by the Central Government through the Desk Officer dated 4th October, 1993 whereby refused to refer the matter for adjudication on the ground that the cause of action arose on 15.3.1980 when the management turned down the workman's request and moreover, the dispute against the management's decision has been raised very belatedly after a lapse of more than 12 years. This is the ground on which the respondent No.1 has not referred the dispute for adjudication. The dispute has been raised by the Union under the provisions of the I.D.Act, 1947. For rasing the dispute, no limitation has been prescribed under the provisions of the I.D.Act. Even, the Limitation Act is also not applicable. Therefore, on that ground, the respondent No.1 is not justified for not referring the industrial dispute for adjudication. When no statutory provision is made and as such, no limitation has been prescribed, then, only on the ground that the dispute is not referred for adjudication on the belated claim, is not proper on the part of the respondent No.1. This aspect has been examined by the Apex Court in case of AJAIB SINGH V. SIRHIND CO-OP MKTD-CUM-PROCESSING SERVICE SOCIETY LTD reported in AIR 1999 SC 1351. The relevant observations made in para-10 of the above referred decision are reproduced as under :

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothe-tical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date the raised the demand regarding his illegal retrenchment / termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of

> full back wages. Reliance of the learned Counsel for the respondent - management on the full bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana, [1999] 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases." However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay." We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an applicable under Section 37-C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over the the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the Courts / boards and tribunal under the Act."

Therefore, the question of delay in raising the dispute, at the most, can be considered by the adjudicating authority at the time of grant of final relief and no doubt, there would be some effect at the time of grant of final relief but right to raise dispute that cannot be taken away by the respondent No.1 only on the ground of delay. But in the instant case, the respondent No.1 had to see that at the time when the industrial dispute has been raised by the workman, whether the dispute has been existing or not. If the dispute was existing, then it was the duty to refer for

adjudication. Merely delay does not cease the dispute to be in existence.

In view of above observation made by the Apex Court and considering the fact that when there is no specific provisions made in the provisions of the Industrial Disputes Act, 1947 and the dispute is remained in existence, even though there was delay not raising the industrial dispute, then also, the decision which has been taken by the respondent No.1 on 4th October, 1993 is perverse, arbitrary and contrary to the law laid down by the Apex Court and hence, the impugned order is required to be quashed and set aside.

In the result, present petition is allowed. The order passed by the respondent No.1 dated 4th October, 1993 is hereby quashed and set aside with direction to the respondent No.1 to reconsider the matter in light of the observations made by the Apex Court in reported decision AIR 1999 SC 1351 after giving reasonable opportunity of hearing to the respective parties and to pass appropriate orders in accordance with law within a period of three months from the date of receiving the copy of this order.

Accordingly, Rule is made absolute with no order as to costs.

Registry to send the writ of this order forthwith on respondent No.1.

Date : 15.1.2004 [H.K.Rathod, J.]

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